

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 9, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaski (US 4 974 398).

Regarding independent claim 1:

Kaski discloses a posture gaiter for a horse comprising:

a fore posture horse gaiter (the gaiter is capable of use on the foreleg) having a weight (46) and a means of attaching the gaiter to the leg (34) above the knee and not on the torso (the device is capable of being attached above the knee, and wraps around the leg only).

Regarding claims 2 and 3:

The discussion above regarding claim 1 is relied upon.

Kaski discloses the weight disposed on the gaiter in such a way as to be directed in a predefined orientation towards the inside of the horse (weights go on inside).

Regarding independent claims 4 and 9:

Kaski discloses a hind posture gaiter having a weight (46) and a means for attaching (36) the gaiter on the leg of a horse (as seen in Fig 1), wherein the gaiter is realized such that the weight is completely disposed in the upper half portion of the gaiter (as there is no frame of reference, the side visible in Fig 4 may be considered the "upper half," rendering the weight in the upper half of the gaiter) and the weight is disposed for location close to a hock when attached to the horse (as seen in Fig 1, the gaiter is "close" to the hock).

Regarding claim 5:

The discussion above regarding claim 4 is relied upon.

Kaski discloses the gaiter fixed below the hock (as seen in Fig 1).

Regarding claims 6, 7 and 12:

The discussion above regarding claims 4 and 9 is relied upon.

Kaski discloses the weight disposed on the gaiter in such a way as to be directed in a predefined orientation towards the inside of the horse (weights go on inside).

Regarding claim 11:

The discussion above regarding claim 9 is relied upon.

This claim repeats the first step of claim 9, and is thus rejected in the same manner, as no frame of reference connects the position to the horse.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaski ('398).

Kaski discloses a gaiter having a weight (46) and means for attachment (34) that is capable of being attached to the foreleg of a horse, but does not specifically disclose attaching the gaiter to the fore leg above the knee.

In the absence of any stated problems solved by or any stated advantage obtained by having a certain feature as claimed in the instant invention (as noted by the alternative placements on the fore or rear legs), it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have used such placement, as this would be one of a finite number of predictable placements for either yielding a desired gait of an animal, or strengthening a desired portion of the animal leg.

5. Claims 4-7, 9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaski (US '398) in view of Cook (US 6 554 752).

Regarding independent claims 4 and 9:

Kaski discloses a hind posture gaiter having a weight (46) and a means for attaching (36) the gaiter on the leg of a horse (as seen in Fig 1), wherein the gaiter is realized such that the weight is disposed for location close to a hock, but does not disclose the weight completely disposed in the upper half portion of the gaiter *when attached to the horse*.

Cook discloses a weighted belt for an animal leg having a weight completely in the upper half when attached (the weight in 30) as an alternative design to the lengthwise arrangement (shown in Fig 7).

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have modified Kaski to rearrange the weight as taught by Cook as this is a well-known art-recognized alternative placement for predictably weighting the leg.

Regarding claim 5:

The discussion above regarding claim 4 is relied upon.

Kaski as modified renders the gaiter fixed below the hock (as seen in Fig 1).

Regarding claims 6, 7 and 12:

The discussion above regarding claims 4 and 9 is relied upon.

Kaski as modified renders the weight disposed on the gaiter in such a way as to be directed in a predefined orientation towards the inside of the horse (weights go on inside).

Regarding claim 11:

The discussion above regarding claim 9 is relied upon.

This claim repeats the first step of claim 9, and is thus rejected in the same manner.

Response to Arguments

6. Applicant's arguments filed 14 January 2010 have been fully considered but they are not persuasive.

In response to applicant's argument that Kaski does not teach the gaiter for use above the knee, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. The device has "means for" attaching to a leg above the knee, which are met by the straps, but does not actively claim the attachment itself in the apparatus claim, and the "above-a-knee horse gaiter" limitation is deemed to indicate functional use of the gaiter, as it does not describe a known-in-the-art naming convention.

In response to applicant's argument that Kaski does not teach a weight completely disposed in the upper half of the gaiter, no frame of reference is provided to indicate the "upper half." The examiner notes that the language of the claim splits the cited clauses, rendering the "when attached to the horse" limitation cited at the end as part of the "disposed close to a hock" recitation, and not as a part of the "upper half" recitation.

In response to applicant's argument that the devices of Cook are not analogous to Kaski because they disclose devices for humans, one of ordinary skill would find a weighted leg strap for one animal is analogous to a weighted leg strap for another.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Although Kaski does not provide a weight in the upper half when attached to a horse, Cook provides the teaching for using a weight in the upper half as an alternative arrangement to the arrangement shown in Kaski.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph W. Sanderson whose telephone number is 571-272-6337. The examiner can normally be reached on M 6:30 am - 11:30 am, T-F 6:30 am - 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael R. Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. W. S./
Examiner, Art Unit 3644

/T. T. N./
Primary Examiner, Art Unit 3644